

UNITED STATES DISTRICT COURT

for the

Western District of North Carolina

Asheville Division

Case No.

1:22-cv-00153

(to be filled in by the Clerk's Office)

DARIOUS BOWENS

Plaintiff(s)

(Write the full name of each plaintiff who is filing this complaint. If the names of all the plaintiffs cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names.)

-v-

TODD ISHEE, ET AL.,

Defendant(s)

(Write the full name of each defendant who is being sued. If the names of all the defendants cannot fit in the space above, please write "see attached" in the space and attach an additional page with the full list of names. Do not include addresses here.)

FILED

Asheville, NC

OCT 18 2022

Clerk, US District Court
Western District of NC

AMENDED

COMPLAINT FOR VIOLATION OF CIVIL RIGHTS

(Prisoner Complaint)

NOTICE

Federal Rules of Civil Procedure 5.2 addresses the privacy and security concerns resulting from public access to electronic court files. Under this rule, papers filed with the court should *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number.

Except as noted in this form, plaintiff need not send exhibits, affidavits, grievance or witness statements, or any other materials to the Clerk's Office with this complaint.

In order for your complaint to be filed, it must be accompanied by the filing fee or an application to proceed in forma pauperis.

I. The Parties to This Complaint**A. The Plaintiff(s)**

Provide the information below for each plaintiff named in the complaint. Attach additional pages if needed.

Name

DARIOUS BOWENS

All other names by which
you have been known:

ID Number

Current Institution

Address

Mountain View C.I.545 Amity Park RdSpruce Pine

City

NC

State

28777

Zip Code

B. The Defendant(s)

Provide the information below for each defendant named in the complaint, whether the defendant is an individual, a government agency, an organization, or a corporation. Make sure that the defendant(s) listed below are identical to those contained in the above caption. For an individual defendant, include the person's job or title (*if known*) and check whether you are bringing this complaint against them in their individual capacity or official capacity, or both. Attach additional pages if needed.

Defendant No. 1

Name

MIKE SLAGLEJob or Title (*if known*)Warden / Superintendent

Shield Number

Employer

North Carolina D.O.C.

Address

545 Amity Park RdSpruce Pine

City

NC

State

28777

Zip Code

☒ Individual capacity☒ Official capacity

Defendant No. 2

Name

DEXTER GIBB'SJob or Title (*if known*)Asst. Superintendent

Shield Number

Employer

North Carolina D.O.C.

Address

545 Amity Park RdSpruce Pine

City

N.C.

State

28777

Zip Code

☒ Individual capacity☒ Official capacity

Defendant No. 3

Name

EDDIE M. BUFFALOE

Job or Title (if known)

Director of North Carolina Prisons

Shield Number

Employer

North Carolina D.O.C / D.P.S

Address

831 W. Morgan St

Raleigh

N.C.

27603-1659

City

State

Zip Code

☐ Individual capacity☒ Official capacity

Defendant No. 4

Name

TODD ISHEE

Job or Title (if known)

Secretary of North Carolina Prisons Doc/DPS

Shield Number

Employer

North Carolina Doc/DPS

Address

831 W. Morgan St.

Sprucepine

NC

28777

City

State

Zip Code

☐ Individual capacity☒ Official capacity

II. Basis for Jurisdiction

Under 42 U.S.C. § 1983, you may sue state or local officials for the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” Under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971), you may sue federal officials for the violation of certain constitutional rights.

A. Are you bringing suit against (check all that apply):

☐ Federal officials (a *Bivens* claim)

☒ State or local officials (a § 1983 claim)

B. Section 1983 allows claims alleging the “deprivation of any rights, privileges, or immunities secured by the Constitution and [federal laws].” 42 U.S.C. § 1983. If you are suing under section 1983, what federal constitutional or statutory right(s) do you claim is/are being violated by state or local officials?

1st, 8th, and 14th Amendment Right US Constitution.

C. Plaintiffs suing under *Bivens* may only recover for the violation of certain constitutional rights. If you are suing under *Bivens*, what constitutional right(s) do you claim is/are being violated by federal officials?

- D. Section 1983 allows defendants to be found liable only when they have acted "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia." 42 U.S.C. § 1983. If you are suing under section 1983, explain how each defendant acted under color of state or local law. If you are suing under *Bivens*, explain how each defendant acted under color of federal law. Attach additional pages if needed.

All Defendants issued the inmate population lockdown, under the work authority of N.C. DPS and Mountain View C.I.

III. Prisoner Status

Indicate whether you are a prisoner or other confined person as follows (check all that apply):

- ☐ Pretrial detainee
- ☐ Civilly committed detainee
- ☐ Immigration detainee
- ☒ Convicted and sentenced state prisoner
- ☐ Convicted and sentenced federal prisoner
- ☐ Other (explain) _____

IV. Statement of Claim

State as briefly as possible the facts of your case. Describe how each defendant was personally involved in the alleged wrongful action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If more than one claim is asserted, number each claim and write a short and plain statement of each claim in a separate paragraph. Attach additional pages if needed.

- A. If the events giving rise to your claim arose outside an institution, describe where and when they arose.

- B. If the events giving rise to your claim arose in an institution, describe where and when they arose.

Starting on or around January 25, 2022, Mr. Gibbs and Slagle Placed the entire inmate population on lock down at Mountain View C.I. And Mr. Buffaloe and Ishee approve the lockdown.

(Theres extra Pages to go with this Section)

C. What date and approximate time did the events giving rise to your claim(s) occur?

on or about January 25, 2022 and still ongoing.

D. What are the facts underlying your claim(s)? (For example: What happened to you? Who did what? Was anyone else involved? Who else saw what happened?)

Since being locked down My anxiety has been bad, Sometimes I have mild panic attacks for being in the cell too long, I get extremely paranoid about something happening to me and no one knowing about it because I'm locked in my cell and I have nightmares from being paranoid, and I get real depressed a lot were

V. Injuries I Just Want to Sleep all day because I don't want to face being in my cell all day locked down. (additional paper - this section)

If you sustained injuries related to the events alleged above, describe your injuries and state what medical treatment, if any, you required and did or did not receive.

My mental health has worsen because of this lockdown the entire inmate population is on. (see above), I take mental health medication and because we are locked in our cells sometimes I cannot hear anyone call medication call because of the dorm noise and I miss medication call and

VI. Relief this leads to bad side effects and even worsen mental health. (Religious services will help my mental health, there being denied).

State briefly what you want the court to do for you. Make no legal arguments. Do not cite any cases or statutes. If requesting money damages, include the amounts of any actual damages and/or punitive damages claimed for the acts alleged. Explain the basis for these claims.

\$150.00 a day we have been on lockdown by the Warden Mike Slagle in his individual capacity.

Injunction against all defendant in the official capacity regarding the prison's unwarranted continuous lockdown because there's enough officers who work on the units.

☐ Yes

☒ No

D. If your answer to C is yes, describe each lawsuit by answering questions 1 through 7 below. *(If there is more than one lawsuit, describe the additional lawsuits on another page, using the same format.)*

1. Parties to the previous lawsuit

Plaintiff(s) _____

Defendant(s) _____

2. Court *(if federal court, name the district; if state court, name the county and State)*

3. Docket or index number

4. Name of Judge assigned to your case

5. Approximate date of filing lawsuit

6. Is the case still pending?

☐ Yes

☐ No

If no, give the approximate date of disposition _____

7. What was the result of the case? *(For example: Was the case dismissed? Was judgment entered in your favor? Was the case appealed?)*

IX. Certification and Closing

Under Federal Rule of Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

A. For Parties Without an Attorney

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Date of signing: X 10-12-2022

Signature of Plaintiff X Darius Bowens
Printed Name of Plaintiff X Darius Bowens
Prison Identification # X 1650733
Prison Address X 545 Amity Park Road
Spruce pine NC 28777
City State Zip Code

B. For Attorneys

Date of signing: _____

Signature of Attorney _____
Printed Name of Attorney _____
Bar Number _____
Name of Law Firm _____
Address _____

City State Zip Code
Telephone Number _____
E-mail Address _____

Since being on lockdown the following has occurred:

1. I never received Proper and lawful notice regards to being Placed on lockdown and modified housing. The Supreme Court has stated that inmates get due Process rights regarding Disciplinary action, 24 hour notice before the hearing to be notified of the infraction(s) he/she is being charged with. If inmates who Cause Problem's gets Proper notice then inmates who are being Placed on lockdown for no fault of their own must get Proper notice of being locked down and why, etc... By Memo, etc...

2. The following are reasons why Mental health has suffered, depression, anxiety, etc... :

(a) I have not been able to contact my family and friends over the Phone because of timing issues, because of being locked down and only able to come out certain times of the day to make Phone calls.

(b) We do not have outside recreation like we are suppose to have, even when we have enough officers, The officers always find excuses to not go outside.

(c) Being on lock down in a single cell, same as solitary confinement causes a lot of depression with me, and a lot of times I feel like I have cabin fever. My anxiety is sky high because sometimes I feel like the cell's walls are closing in on me, I've had mild panic attacks which sometimes I feel like I am about to die.

(d) My anxiety is also high because the floor officers hardly ever do their rounds in the dorm to do cell checks to make sure inmates are OK!.

Darius Bowens

Attn:

Clerk,

I, Darius Bowens, the Plaintiff of this case am not filing this claim under forma pauperis because under the filed claim, I have paid the full \$350.00 filing fee. (see Plaintiff's Trust fund Account receipt enclosed with this letter.

Since I have paid the full filing fee I am not stricken under the PLRA's initial review process. I am asking for a Judge's view on this.

Thankyou Sincerely,

Darius Bowens

IBSR140 (60)

NORTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
TRUST FUND ACCOUNT STATEMENT
FACILITY: 4855 - MOUNTAIN VIEW CI
FOR: 09/26/22 - 10/03/22

10/03/22
18:03:31
PAGE 330

ACCT. NAME: BOWENS, DARIOUS E.
BED: FPOD-102

ACCT#: 1650733
TYPE: INMATE

ENDING BALANCE 10/03/22 \$ 303.52 INCLUDES CANTEEN LIMIT OF \$60.00

BATCH DATE	NBR.	TYPE	REFERENCE NUMBER	FACL	+/-	AMOUNT	BALANCE
10/03/22	047	ADMIN. FEE WTH	0201220723A	4855	- \$	4.90	\$ 303.52
10/03/22	043	IJP PAYROLL	20221001IC01	4855	+ \$	4.90	\$ 308.42
10/03/22	035	FILING FEE WTH	1003221417B	4855	- \$	350.00	\$ 303.52
09/30/22	012	CASHLS CANTEEN-I	00328	4855	- \$	4.92	\$ 653.52
09/30/22	012	CASHLS CANTEEN-I	00327	4855	- \$	6.16	\$ 658.44
09/29/22	007	CASHLS CANTEEN-I	00319	4855	- \$	1.53	\$ 664.60
09/29/22	007	CASHLS CANTEEN-I	00318	4855	- \$	7.12	\$ 666.13
09/28/22	012	CASHLS CANTEEN-I	00008	4855	- \$	3.86	\$ 673.25
09/28/22	012	CASHLS CANTEEN-I	00007	4855	- \$	1.53	\$ 677.11
09/27/22	008	CASHLS CANTEEN-I	00208	4855	- \$	25.00	\$ 678.64
09/27/22	008	CASHLS CANTEEN-I	00207	4855	- \$	7.15	\$ 703.64
09/27/22	008	CASHLS CANTEEN-I	00206	4855	- \$	11.11	\$ 710.79
09/26/22	055	ADMIN. FEE WTH	0201220723A	4855	- \$	0.40	\$ 721.90
09/26/22	055	ADMIN. FEE WTH	1116211506A	4855	- \$	3.75	\$ 722.30
09/26/22	055	COPAY WITHDRAWAL	0204220840I	4855	- \$	0.75	\$ 726.05
09/26/22	053	IJP PAYROLL	20220924IC01	4855	+ \$	4.90	\$ 726.80
09/26/22	008	CASHLS CANTEEN-I	00217	4855	- \$	9.31	\$ 721.90
09/26/22	008	CASHLS CANTEEN-I	00215	4855	- \$	6.94	\$ 731.21
BEGINNING BALANCE							\$ 738.15

DEBT DATE	DEBT TIME	TYPE OF DEBT	AMOUNT OF DEBT	AMOUNT STILL OWED
02/01/22	07:23	ADM FEE -CASE#1/20/2209:00	\$ 10.00	\$ 4.70
03/08/22	07:03	ADM FEE -CASE#2/28/2222:30	\$ 10.00	\$ 10.00
03/22/22	06:42	ADM FEE -CASE#3/19/2212:00	\$ 10.00	\$ 10.00

THIS STATEMENT SHOWS DEPOSITS AND WITHDRAWALS THAT OCCURRED
BETWEEN 09/26/2022 AT 01:01:01 AND 10/03/2022 AT 18:03:31.

ENDING BALANCE IS THE BALANCE AS OF MONDAY, OCTOBER 3, 2022 AT 18:03:31.